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SEVENTH DESPATCH

ON

INDIAN CONSTITUTIONAL REFORMS

(Grand Committee.)

I/32

No. 8 of 1919.

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

REFORMS.

To

THE RIGHT HONOURABLE EDWIN MONTAGU,

His Majesty's Secretary of State for India.

Simla, May 28, 1919.

SIR,

In para. 80 of our despatch of March 5, 1919, we informed you that we were in communication with local Governments in regard to the composition of the grand committee and would present our detailed proposals to you in our second despatch. We are now in a position to lay our views before you. We regret the delay which has occurred, but the composition of the grand committee is so closely related to the size and composition of the provincial legislative councils that we could only consider it in the light of the proposals of Lord Southborough's franchise committee.

2. The question is of fundamental importance in view of the functions assigned to the grand committee, and we make no apology for recalling briefly the weighty considerations that are involved. The grand committee was devised by the authors of the Report (para. 252) as a means of obtaining legislation which the Governor considers essential for the peace of his province or for the discharge of his responsibility for those duties of Government which are not made over to ministers. It was emphasized that recourse to a grand committee should not be had without strong reason; but it was also made clear that there would be no other constitutional mechanism for passing a law essential to the fulfilment by the official government of its own particular duties towards Parliament, if the law in question happened to be distasteful to a majority in the legislative council, and if there was thus no assurance that it would be passed by that body. The position was developed in our despatch of March 5 (paras. 110 and 80). We pointed out that, while the influence of the popular side of the provincial Government must steadily grow, the standards of administration within the field of work for which Parliament continues to hold the official government responsible must be maintained, and the Governor must resolutely use his powers to prevent them from deteriorating. As good administration is ultimately based on good laws, it follows that the Governor's power over legislation, in all matters for which his is the direct responsibility, must be effective. We concluded therefore that when the situation is such that the Governor deliberately withdraws a measure from the council and refers it to a grand committee, he should be secured from prospects of failure. Local Governments, we added, were not satisfied with the position described in the Report. They felt strongly that the grand committee procedure had been made too difficult, and that the majority offered to Government was too uncertain for practical purposes.

3. The authors of the Report proposed (para. 252) that the grand committee in every council should be so constituted as to comprise from 40 to 50 per cent of the council; that the Governor should have power to nominate a bare majority, exclusive of himself; that not more than two-thirds of the majority should be officials; and that the nominated non-officials should be at least partly

selected with a view to securing the representation of interests affected by the Bill and not otherwise represented. It was not specified from what sources the nominated non-officials were to be selected; and it will therefore be convenient to consider two alternative courses,—first, that they should be drawn exclusively from the non-official nominated members of the council, and second, that there should be no such restriction on the Governor's choice. The former alternative, if practicable, could be justified by the fact that the elected element in the council will be able to secure representation of all the interests with which it is concerned. The latter alternative ignores the strong probability that the type of old-fashioned Indian gentleman, conservative by disposition and anxious within reason to side with the Government, will not be found—at any rate at the outset—among the elected members of the new Councils.

4. When we turn to the report of the franchise committee (para. 25) we find that they have given special attention to providing each provincial council with a sufficient number of officials to enable the grand committee to be constituted as proposed in the Report; though they warn us that the number they have provided will be inconveniently small even for a committee comprising only 40 per cent of the council. They have made no reference, and apparently attached no importance, to the part which may have to be played in grand committees by nominated non-official members of the councils. We shall now attempt to adjust the size of the grand committee, on the basis described in the Report, to the recommendations of the franchise committee. In each table the lines (*e*) and (*g*) represent respectively the number of official seats (omitting of course the Governor) and the number of nominated non-official seats which the franchise committee propose for the legislative council in each province.

(*i*) Taking the grand committee at 50 per cent.

—	Madras.	Bombay.	Bengal.	United Provinces.	Punjab.	Bihar & Orissa.	Central Provinces
(*a*) Size of council	118	111	125	118	83	93	70
(*b*) Size of grand committee	59	55	62	59	41	49	35
(*c*) Nominations required	30	28	32	30	21	25	18
(*d*) Officials required	20	18	21	20	14	16	12
(*e*) Actual number of officials ...	18	17	19	17	15	15	11
(*f*) Others required	10	10	11	10	...	9	6
(*g*) Actual number of nominated non-officials	6	6	5	5	6	9	5
(*ii*) Taking the grand committee at 40 per cent.							
(*b*) Size of grand committee ...	47	44	50	47	33	39	23
(*c*) Nominations required ...	24	23	26	24	17	20	15
(*d*) Officials required ...	16	14	16	16	10	13	10
(*e*) Actual number of officials	18	17	19	17	15	15	11
(*f*) Others required ...	8	9	10	8	7	7	5
(*g*) Actual number of nominated non-officials	6	6	5	5	6	9	5
(*iii*) Taking the grand committee at $33\frac{1}{3}$ per cent.							
(*b*) Size of grand committee	39	37	42	39	28	33	23
(*c*) Nominations required	20	19	22	20	15	17	12
(*d*) Officials required	13	12	14	13	10	11	8
(*e*) Actual number of officials ...	18	17	19	17	15	15	11
(*f*) Others required	7	7	8	7	5	6	4
(*g*) Actual number of nominated non-officials	6	...	5	5	6	9	5

5. From these tables it is clear that, with the possible exception of the Punjab, no council will be able to provide officials enough for a grand committee on a 50 per cent basis. If a 40 per cent basis be taken, the actual number of officials will in no case be less than the number required for the committee, but the margin is clearly insufficient. For as a practical proposition it will not be feasible to make all the officials in the council available for the purposes of every grand committee. We do not for example contemplate that the Governor will always be able to preside, and one official member will frequently be required to take his place, while it will not be convenient to rely on all the members of the executive council and the Advocate General or Legal Remembrancer being always present. We feel therefore that a grand committee on a 40 per cent basis will, as the franchise committee were careful to point out, give rise to practical inconvenience in almost every province. It would not in fact be possible to provide a sufficient number of officials unless the strength of the grand committee were reduced to 33⅓ per cent of the council. But even with this reduction it would still be impossible in all except the three smallest provinces to find nominated non-official members enough for the remaining third of nominations which the Governor will be required to make. In order to fill these from among the nominated non-official members it would be necessary to reduce the grand committee still further to 25 per cent of the council. We are agreed that this would give too small a body for the propose of carrying government measures. But a stronger objection remains. Nomination has been confined by the franchise committee not merely to the narrowest limits but also for the most part to the classes who carry least weight in politics; and it would in our opinion be impossible, while excluding the great majority of the elected members, to include in every grand committee practically all the nominated members, and to carry contentious government measures by the votes of persons nominated to represent the depressed classes, Anglo-Indians, Indian Christians, excluded tracts, labour or other interests of a purely sectional character. It is thus apparent that we cannot have a grand committee of the type indicated in the Report and count upon being able to draw on the non-official nominated members of the council exclusively for the nominated element in the smaller body.

6. A grand committee of the Report type, however, is practicable, if its strength is kept down to 33⅓ per cent of the council, and if we are prepared to allow the Governor to nominate his non-official members from among the whole non-official element in the council. But this second condition must be faced with a frank recognition of facts. With a grand committee of 33⅓ per cent of the total strength of the council, the Governor will have to nominate non-officials ranging in number from 4 in the Central Provinces to 8 in Bengal. In each case several of these—indeed most of them, if the representation of important interests is to be aimed at—will be elected members of the council. Can the Governor count upon their support in passing a law which, though he may regard it as vital to the discharge of his duties, happens to be distasteful to the non-official leaders in the council? It has been suggested that he can rely at least on the elected European and Anglo-Indian members; but we discard the idea that he should have to draw upon them in all cases of difficulty, as it would immediately import racial feeling into the work of the grand committee. It is also true that the great extension of the franchise ought to ensure the return to the new councils of some representatives of the more conservative elements in the community. The habit of independent political thought, however, has still to develop; and we doubt whether at first many elected members of the councils will be able to withstand, whatever may be their own convictions, the temporary vehemence of an agitation against a Government measure which their elected leaders are determined to oppose. In these circumstances we do not consider that the Governor has that reasonable certainty of carrying his measures to which his responsibility to Parliament entitles him. This is the conclusion at which local Governments appear to have arrived; and our own recent experience has driven us to advise that, if the grand committee is to fulfil the purpose for which it was designed, the Governor must not be left so dependent on the support of the elected members of the council.

7. We have thus reached a dilemma. If we follow the Report literally and even if, as the franchise committee advise, we reduce the size of the grand committee materially, the Governor will still have to select 17 per cent

(one-third of a bare majority) of the members from among the non-official members of the council. The nominated non-officials are not sufficiently numerous, nor are they likely always to be of a suitable type, to serve his purpose. The elected non-officials cannot be counted upon to help the Governor to pass a measure which may not happen to be popular, however essential he may consider it to good administration. From this dilemma the way of escape lies in considering the underlying intention of the authors of the Report when they were devising the mechanism of the grand committee. As they explain in paragraph 252, their first endeavour was to make the grand committee in each province a microcosm of the existing council; but difficulty was found in securing due proportional representation of the various interests reflected in the new councils,—a difficulty, we may note, which must attach more or less to any epitome, so to speak, of the full council. The Report then turned to a reproduction on more general lines of the constitution of the existing legislatures in the provinces; and we understand that its final proposals were based on the principle—alluded to in paragraph 80 of our first despatch—of giving the official Government in each province at least as good a chance of securing essential legislation in the grand committee as it has, through the combination of official and nominated non-official votes, in its exisiting legislative body. This purpose was defeated in the first place by the proposal being stated in the form of an average for all the provinces, which did not give sufficient play for existing local variations. In the second place the wide extension of the elective principle will upset the balance of power; and one of the three elements in our present councils—the nominated non-official—will practically disappear as an effective force in the new constitution.

8. In its essence, however, we can get back to the purpose and spirit of the Report by reproducing in the grand commitree the broad relation between official and non-official voting power which obtains under the present law in our existing councils. The simplest method of doing this would be to make each grand committee of the same size, and provide it with the same number of official members, as the regulations permit for the legislature of the province to-day. The table below shows that this unfortunately is impracticable:—

Province.	Composition of present Council, as permitted by existing regulations.			Ratio of officials to total strength.	Number of officials provided by franchise committee.
	Official.	Non-official.	Total.		
1	2	3	4	5	6
Madras	21	26	47	45%	18
Bombay	19	28	47	40%	17
Bengal	21	32	53	40%	19
United Provinces	21	27	48	44%	17
Punjab	12	17	29	41%	15
Bihar and Orissa	19	25	44	43%	15
Central Provinces	11	14	25	44%	11

(The legal maximum strength—excluding members of the executive council—for each of these provinces is 50, except in the Punjab and the Central Provinces where it is 30. The maximum is imposed only in the Bengal Regulations).

The difficulty is, as the last column makes clear, that on our new Councils we shall not have nearly enough official members to let us reproduce in our grand committees the size and proportions of our existing legislatures In column 5 of the statement, however, we have the key to the situation. Let us determine for each province the number of official councillors who ought to be available for grand committee duty and then let us construct a grand committee in which they will bear the same proportion to the total strength as the official element does in the existing council. For example, in Bombay, the permissible element in the existing council is 40 per cent. If we assume that, under the new

arrangements, the Governor of Bombay can count upon 14 official members of the legislature as available for his grand committee, then the total strength of the committee will be 35, of a whom 40 per cent or 14 will be officials, and 60 per cent or 21 will be non-officials. But out of this total number of 35 he has to have the nominating of a bare majority. There will thus be altogether 18 nominated members, of whom 14 will be official and 4 non-official ; and the other 17 members will be elected to the committee.

9. We hope that this proposal is intelligible enough to allow us now to set it forth in tabular form for each province. We have assumed that a margin of three officials (members of the executive council, etc.) should be left in the presidencies, and a margin of two in the other provinces, as not available for duty on every grand committee. From the number of available officials thus left for duty on the committee, we deduce the strength of the committee by applying the ratio shown in column 5 of the table in the last paragraph ; and the results are as follows :—

	Number of officials available for grand committee duty.	Accepted ratio of officials.	Deduced strength of grand committee.	Distribution.		
				Officials.	Nominated non-officials.	Elected.
1	2	3	4	5	6	7
		Per cent.				
Madras	15	45	33	15	2	16
Bombay	14	40	35	14	4	17
Bengal	16	40	41	16	5	20
United Provinces	15	44	35	15	3	17
Punjab	13	41	31	13	3	15
Bihar and Orissa	13	43	31	13	3	15
Central Provinces	9	44	21	9	2	10

The figures in Column 4 have been adjusted very slightly so as to place the nominated section of the committee in each case in a bare majority of one.

10. We have considered another variant. This would be a grand committee bearing a uniform ratio in all provinces to the size of the full council, and composed of officials and non-officials in the same ratio as in the existing councils. If we take the committee as one-third of the council—and it could hardly be smaller—the figures would be as follows :—

	Size of council.	Size of grand committee.	Accepted ration of officials.	Distribution.		
				Officials.	Nominated non-officials.	Elected.
			Per cent.			
Madras	118	39	45	17	3	19
Bombay	111	37	40	15	4	18
Bengal	125	42	40	17	5	20
United Provinces	118	39	44	17	3	19
Punjab	83	28	41	12	3	13
Bihar and Orissa	98	33	43	14	3	16
Central Provinces	70	23	44	10	2	11

The difficulty about this scheme is that it takes too heavy a toll of the officials; at a pinch every official member of the council in the United Provinces would have to sit on a grand committee, and every member but one in Madras, Bihar and Orissa and the Central Provinces. This is a practical objection which leads us to prefer the alternative described in the preceding paragraph.

11. The proposals in para. 9 then represent our matured recommendation. They differ from the Report in that the strength of the grand committee will vary from province to province; in the Punjab it will be 37 per cent of the strength of the new Council, in Bengal 33 per cent, in Bihar and Orissa 32 per cent, in Bombay 31 per cent, in the United and Central Provinces 30 per cent, and in Madras 28 per cent. It will be remembered that the franchise committee recommended an all round ratio of 30 per cent, so that our proposals are in this respect more liberal than theirs. What we now advise differs from the report also in giving an official element which is not strictly limited to 34 per cent of the whole strength of the committee; but it complies with the spirit of the Report in putting the relative voting power of the officials and the non-officials on precisely the same footing as in the present legislative bodies. It aims at placing the official Government in neither a better nor a worse position than it enjoys at present; and we are confident that it will not give the Government greater power than it can at any moment assume under the existing regulations. Besides our claim that our proposals carry out the definite intentions of the authors of the Report, we believe that only in this way is it possible to ensure that the grand committee will be capable of discharging the duties which are expected of it. We are fully alive to the disadvantages of the official *bloc*, but we are frankly convinced that the necessary security is not, under present conditions, to be obtained in a legislative body in which the official element is reduced to a virtual maximum of one third. We cannot urge too earnestly that, for the discharge of his heavy responsibilities, the Governor should find in his grand committee a sure staff, and not an unstable reed, and that he should not be placed in a worse position *vis-à-vis* his grand committee of the future than that in which he is to-day *vis-à-vis* his existing council.

12. For the elective element in the grand committee we accept the proposals in the report. It will be chosen, in the case of each committee by the elected members on the council of the system of the transferable vote.

13. Our colleague Sir Sankaran Nair has in his minute of dissent given his reasons for adhering to the proposals made by the authors of the Reforms Report.

We have the honour to be,

SIR,

Your most obedient, humble Servants,

(Sd.) CHELMSFORD.

„ C. C. MONRO.

„ C. SANKARAN NAIR.

„ W. H. VINCENT.

„ J. S. MESTON.

„ T. HOLLAND.

„ R. A. MANT.

Minute of Dissent.

In my Minute of Dissent to our first Despatch, I expressed the view that the device of the Grand Committee to obtain legislation considered essential by the Governor is not really necessary in view of the fact that the Governor-General in Council will continue to have the right of concurrent legislation for the Provinces. I need not here reiterate the arguments. Recent events in the Punjab give additional strength to those arguments. Proceeding on the assumption that Grand Committees will be constituted, I am clearly of opinion that their composition should be as is laid down in the report and not as my Colleagues now suggest. In our first Despatch, they urged that in the composition of a Grand Committee there should be reproduced the proportions of elected, nominated and official members in the existing Provincial Legislative Councils. Now, after considering the recommendations of the Franchise committee on the composition of the Councils, they give up their earlier proposal and put forward other proposals which, in my view are equally unacceptable. My Colleagues would reduce the size of the Grand Committee from forty to fifty per cent as proposed in the Reforms Report to 37 per cent of the strength of the new Council in the Punjab to 33 per cent in Bengal and to a smaller proportion in the other provinces. They also propose to increase the official element. These proposals are intended to reproduce in the Grand Committee the broad relation between the official and non-official voting powers which obtains under the Regulations in our existing Councils. There were two reasons which induced the authors of the Reforms Report to discard the suggestion that the official proportion should be reproduced in the Grand Committee and that the latter should comprise any proportion less than 40 to 50 per cent of the strength of the new Councils. They found that in order to secure the due representation of the interests represented by communal and special electorates without reducing the representation of the interests represented by the general electorates, we must have a Grand Committee which must comprise 40 to 50 per cent of the strength of the new Councils and that we must also reduce the official element. This argument has not been met by my Colleagues. So far as I can see, we cannot secure the due representation of the special and communal interests and of the interests represented by the general electorates in the Grand Committee as they will be constituted by my Colleagues. Considering the importance of the legislative measures that will be placed before it, according to the Reforms Report, and, *a fortiori*, according to the proposals of my Colleagues in the Despatch on the Report of the Functions Committee, it seems to me essential that all such interests must be duly repesented and that the Committee must consist of a number not less than 40 to 50 per cent of their strength. The Grand Committee, according to my Colleagues, will consist of a smaller number than the existing Legislative Councils with the result that the measures relating to the reserved subjects which consist of the more important subjects, will be passed by a Council which would not carry the same weight as even the existing Legislative Councils. In order to support their proposal, my Colleagues have to assume that they will not be able to make all the officials in the Councils available for the purpose of every Grand Committee, while every elected member will be so available. They assume that they will not be able to rely on what they call the more conservative elements in the community. They do not like to carry their contentious government measures by the votes of persons nominated to represent the depressed classes, Anglo Indians, Indian Christians, labour and other interests of a sectional character. They have also to assume that the elected non-officials in a body will be opposed to them. I do not think we are entitled to make any such assumptions in putting forward legislative proposals for reform. Further, they will accept the number of officials provided by the Franchise Committee, while they would reject the composition of the Grand Committee for which the Franchise Committee have provided that number.

There are further certain other assumptions underlying the proposals of my Colleagues which I am unable to accept. It is assumed that the effect of the growing influence or the control of the legislature over the Provincial Government would be a deterioration of the standards of administration. I see no reason for making any such assumption. On the other hand the past work of the elected members of legislative Councils would justify the contrary assumption. If we are not prepared to assume that Legislative Councils will bring a sense of responsibility to bear upon their public work; if, on the contrary, we must assume that their tendency will always be in the direction of a lowering of the standards of administration and that it becomes the constant duty of the Governor to keep a vigilant watch over

such a tendency in the Council and to act on his individual responsibility as if he alone was concerned for good Government the logical conclusion could not be resisted that it would be far better, in the interests of the country, to abolish the Councils altogether and frankly to invest the Governor with undivided power and responsibility. As no such move is contemplated, as, on the contrary, the whole purpose of the reforms is to make the Government more popular and more constitutional by making Legislative Councils larger and more representative and by endowing them with real control and greater influence over the administration in the transferred and reserved spheres respectively, we should courageously act on the footing that these Councils will be competent to discharge the duties laid upon them and will, as a rule, act with good sense and public spirit. If this is so, it must follow that the Governor should, as a rule, act with the concurrence of the Legislative Council ; that he should carry even the legislation in reserved subjects, as a rule, through the Council, and that he must regard his power of certification as an exceptional power that should only be brought into play sparingly.

Meetings of Grand Committees should not be of frequent occurrence, nor is there reason why all the official members of the Council should not be available to serve on every Grand Committee. More than one committee would not be sitting at the same time. Official members are rarely absent from Council meetings. It should not be necessary to swell their number merely with a view to provide different sets of men for different Grand Committees nor out of a feeling of want of confidence in the non-official members to support the Government measure. Almost invariably a number of nominated as well as elected non-official members is found in every Council who do not go with the majority of the elected members. This will be so much more frequently in the Councils of the future. Rid of the official *bloc* and with parties among themselves, there will be much more of division of opinion among elected members and there will be no combination among them and the nominated members solidly to vote against official measures My Colleagues have made a pointed reference to our most recent experience in the Indian Legislative Council which shows to their eye that no non-official members can be relied upon invariably to support a Government measure. A Government measure which evokes such a unanimous and concentrated opposition must be an exceptionally controversial measure, and the odds are at least even that the combined opinion of all non-officials is as sound as that of the Government which seeks to force down such a measure on an unwilling people. In this connection, I may recall the words addressed by Lord Morley to the Government of India. In his Despatch of November 1908 in which he conveyed his decision to do away with official majorities in the Provincial Councils, he pointed out that when all the non-officials are unanimously opposed to a measure, it is very likely desirable that that measure should not be proceeded with, for the time being at any rate. The wisdom of this advice will still more be apparent in future with the growing power of public opinion and the increasing necessity of Government's relying upon the support of opinion If there is any force in this line of reasoning—and I venture to think that on any other footing there is no *raison d'etre* for reforms at all—then we can easily accept the Report Scheme of the composition of Grand Committees as well as the Southborough Committee's recommendation. Given Provincial Councils constituted as the Southborough Committee have recommended, Grand Committees consisting of 40 to 50 per cent of the total strength of the Councils and including a bare majority of nominated members, can certainly be constituted. The non-official element among the nominated members need not be confined to the nominated non-official section of the Council. It is nowhere stated in the Montagu-Chelmsford Report that the Governor should not nominate elected members. The Governor would make the nomination *ad hoc* and it is reasonable to suppose that he would select for nomination such of the elected members as he may rely upon. If a legislation removed from the purview of the Council cannot be carried through a Grand Committee with the support of a very few elected members in addition to that of the officials it must be a bad measure ; and I would unhesitatingly conclude that such a measure which has not a single friend among non-officials even if they have been elected to the Council had better not be enacted into law at all.

Holding these views, I am sorry I am unable to join my Colleagues in proposing the variations from the Report Scheme which they urge in the Despatch.

C. SANKARAN NAIR.